IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6390 of 2006

Balasaheb Antu Yevale-Jagtap ..Petitioner

vs.

1. Bhimrao Krishna Jagtap
and others ..Respondents

Ms.A.R.S.Baxi for petitioner.

CORAM: S.C.DHARMADHIKARI J.
14th April, 2007

P.C.

1. Rule. Returnable forthwith.

2. The affidavit of service filed on 6th November, 2006 by Ms.Baxi shows that each of the respondents has been served with the present petition and annexures thereto but none has appeared to contest the petition.

3. By this petition under Article 227 of the Constitution of India, the order passed by the lower Appellate Court in Misc.Applciation No.32 of 2005 in Appeal No.410 of 1999 has been impugned. Ms.Baxi appearing for the petitioner submits that Misc.Application was filed for bringing the present petitioner so also Maruti Antu Yeole and others on record in substition of the original appellant Antu Yeole who had died on 19th March, 2004. She submits that

the lower Appellate Court was in error in dismissing the application on the ground that the appeal was dismissed in default on 10th January, 2003 but was restored and none has come forward to prosecute the same. Even after the death of the deceased there is no ground to condone the delay is an erroneous conclusion according to Ms. Baxi.

4. With her able assistance I have perused the petition and annexures thereto including Misc.Application No.32 of 2005 and the order passed thereon.

5. In a decision reported in A.I.R.2003 S.C.4244 (Mithailal Dalsangar Singh and others Vs.Annabai Devram
A Kini and others), the Hon'ble Supreme Court has set out
the liberal approach which has to be adopted while substituting the heirs and legal representatives of the deceased parties to a suit. In absence of very good and cogent grounds indicating gross negligence, deliberate inaction or something akin to misconduct, the application has to be allowed and in appropriate case, even if there is delay, by imposing cost on the parties. None should be prejudiced but must have an opportunity of adjuciation of their claim on merits.

6. In such circumstances and applying the same principles I find that the facts in the present case do not disclose

that delay is such as is incapable of being condoned. The lower Appellate Court could have put the parties to some conditions including payment of cost and allowed the application for impleadment. The order under challenge suffers from complete non application of mind to the aforesaid principles so also ignores the factual position on record. In such circumstances, the same is unsustainable and deserves to be interfered with. Rule is accordingly made absolute. The order dated 27th June, 2006 stands quashed and set aside. Misc.Application No.32 of 2005 is allowed and the petitioner and other parties thereto are impleaded as appellants in place of deceased Antu Chandru Yeole. The amendment to be carried out within a period of four weeks from today. Considering that the application was made after a period of about one year after the death of the deceased it would be appropriate to impose costs quantified at Rs.2000/- on the petitioners. Costs condition precedent and to be deposited within the same period in the lower Appellate Court.

4. Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI J.)